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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GEORGE GUND III, Individually,
and as the personal representative of
the ESTATE OF GREG GUND, et al., } CASE NO. C 07 4902 (VRW)
Plaintiffs, } [Removed from Superior Court of
California for the County of San
Francisco, Case No. CGC-07-465133]
vs.
PILATUS AIRCRAFT, LTD., et al., }
Defendants. }
} **JOINT CASE MANAGEMENT
STATEMENT**
} [Pursuant to Civil Local Rule 16-9]

Pursuant to Civil Local Rule 16-9 and the Court's Standing Order, the Parties hereby submit their Joint Case Management Statement in anticipation of the Case Management Conference scheduled for February 14, 2008 at 3:30 p.m.

1. Jurisdiction and Service

Subject matter jurisdiction is based on 28 U.S.C. §§ 1332(a), 1441(b) and 1446. There are no issues regarding personal jurisdiction or venue.

All of the named parties have been served. Plaintiffs believe that all defendants essential to the resolution of this matter have been served. Plaintiffs had previously named Pilatus Aircraft, Ltd. and Pilatus Business Aircraft as

1 defendants, but have dismissed both without prejudice, subject to a tolling
2 agreement.

3 The parties note that another lawsuit arising from the same aircraft accident
4 which gives rise to the instant matter is pending in San Francisco Superior Court
5 (*Lori Rezabek-Kells, et al. v. Pilatus Aircraft, Ltd., et al.* Case No. CGC-07-
6 465132). That lawsuit was filed by the aircraft passengers' estates and surviving
7 family members. One of the defendants in that action, GG Aircraft, LLC (the
8 registered owner of the subject aircraft) is one of the plaintiffs in this action. Pratt
9 & Whitney Canada Corp. ("P&WC") is also a defendant in that action. The
10 passenger plaintiffs in the state court action gave notice of a conditional, sliding
11 scale settlement with the Gunds and GG Aircraft on November 30, 2007. On
12 December 21, 2007, P&WC filed a motion pursuant to *California Code of Civil*
13 *Procedure* § 877.6 challenging the purported "good faith" of the settlement. The
14 matter was heard on January 17, 2008, and continued to March 19, 2008, to permit
15 discovery to be taken on issues relevant to the *Tech-Bilt* factors. If the Superior
16 Court denies the good faith determination, the parties expect to coordinate
17 discovery in the two actions to eliminate unnecessary duplication and expense.
18 P&WC may also file a counterclaim against the Plaintiffs in this action for
19 indemnity and contribution. P&WC expects to make a final decision in this regard
20 promptly after the good faith issue has been resolved in the Superior Court. If, on
21 the other hand, the sliding scale settlement is ultimately determined to be in good
22 faith pursuant to section 877.6, the parties herein expect GG Aircraft to be
23 dismissed from the state court action, at which point complete diversity will exist
24 between the remaining parties. The parties anticipate that the state court action
25 will thereafter be removed to this Court and the cases consolidated for discovery
26 purposes only.

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1 2. Facts

2 On July 16, 2005, a Pilatus PC-6 model aircraft crashed into the Pacific
3 Ocean near Playa Flamingo, Costa Rica. All six occupants aboard the aircraft died
4 as a result of the crash. The aircraft pilot was Plaintiffs' decedent, Gregory Gund.
5 The aircraft was owned by GG Aircraft, LLC.

6 In this action, Gregory Gund's parents, George Gund III and Theo Gund,
7 George Gund IV, Gregory Gund's estate and GG Aircraft, LLC have sued the
8 aircraft and engine manufacturers for wrongful death, for indemnity arising from
9 sums anticipated to be paid to settle the passengers' wrongful death claims, and for
10 the value of the aircraft itself. As previously noted, the heirs and families of the
11 five passengers who died in the accident have filed suit in San Francisco Superior
12 Court.

13 Plaintiffs contend that the crash was the result of an in-flight engine failure
14 of the Pratt & Whitney Canada PT6A-27 turbo-prop engine, and will present a
15 product liability action against the engine manufacturer. Plaintiffs have dismissed
16 Pilatus, the aircraft manufacturer, without prejudice, subject to a tolling agreement.

17 Based on several inspections of the engine and its component parts, P&WC
18 denies that there was any malfunction or failure of any kind of the engine. P&WC
19 maintains instead that the accident resulted entirely from pilot error on the part of
20 Gregory Gund.

21 The parties therefore dispute the cause of the accident, whether the engine
22 was defective in any manner, whether P&WC was negligent, whether the pilot was
23 negligent, whether any warranties existed in Plaintiffs' favor, whether any
24 warranties were breached, and damages.

25 3. Legal Issues

26 P&WC maintains that Plaintiffs remedies' are limited by the Death on the
27 High Seas Act, codified at 46 U.S.C. § 30302, et seq., which preempts state law
28

1 remedies. P&WC is also examining issues associated with the choice of law
2 applicable to this case.

3 Plaintiffs dispute the application of the Death on the High Seas Act to this
4 accident.

5 **4. Motions**

6 P&WC anticipates filing a motion for summary adjudication regarding the
7 application of the Death on the High Seas Act in the near future. P&WC also
8 anticipates the possibility of *Daubert* motions to exclude testimony offered by
9 some of Plaintiffs' experts.

10 As discussed above, P&WC's motion challenging the "good faith" of the
11 passengers' estates' settlement with the Gunds/GG Aircraft is scheduled to be
12 heard again on March 19, 2008 in San Francisco Superior Court.

13 **5. Amendment of Pleadings**

14 As noted above, depending upon the outcome of the good faith settlement
15 determination in San Francisco Superior Court, P&WC anticipates the possibility
16 of filing a counterclaim against the Plaintiffs in this case.

17 Plaintiffs contend that this is the wrong action for such a counterclaim.

18 The parties propose a deadline of **May 1, 2008** to amend their pleadings.

19 **6. Evidence Preservation**

20 The parties have agreed to preserve the aircraft wreckage. The parties have
21 conducted inspections of the engine and its component parts subject to agreed
22 protocols, and anticipate scheduling a tear down inspection of the propeller within
23 the next 60 days. The aircraft wreckage is stored in Costa Rica and remains under
24 Plaintiffs' control, who have agreed to preserve it for further inspection by the
25 parties. The engine and propeller are located in Arizona.

26 **7. Disclosures**

27 The parties anticipate exchanging timely disclosures of witnesses and
28 documents pursuant to F.R.C.P. Rule 26(a) by February 7, 2008.

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1 8. Discovery

2 The parties expect to pursue discovery regarding issues of both liability and
3 damages. The parties do not presently anticipate any issues relating to the
4 disclosure or discovery of electronically stored information.

5 The parties have conducted two inspections of the engine in Arizona, and a
6 preliminary inspection of the wreckage in Costa Rica. A tear down inspection of
7 the propeller is anticipated in the next 60 days, and a more thorough inspection of
8 the wreckage in Costa Rica must also be scheduled by the parties in coordination
9 with their experts.

10 Because this crash occurred in Costa Rica, issues of international law will
11 arise during discovery. Numerous persons witnessed the accident and are located
12 in Costa Rica. The parties have already taken steps to identify and locate these
13 persons. The accident was also investigated by the Costa Rican civil aviation
14 authorities, who issued a final report and determination regarding the probable
15 cause of the accident.

16 Although Costa Rica is a signatory to the Inter-American Convention on the
17 Taking of Evidence Abroad, the U.S. Department of State advises, "Keep in mind
18 that the process for obtaining responses to Letters Rogatory in civil cases is very
19 slow because the civil courts in Costa Rica are very inefficient." The parties
20 therefore anticipate that there will be delays associated with necessary discovery
21 activities in Costa Rica. The parties share a desire to conduct reasonable and
22 necessary discovery in an efficient manner to the greatest extent possible, and are
23 working together to identify potential solutions to the procedural hurdles that are
24 likely to be encountered.

25 9. Class Actions

26 Not applicable.

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1 10. Related Cases

2 This case is related to *Lori Rezabek-Kells, et al. v. Pilatus Aircraft, Ltd., et*
3 *al.*, Case No. CGC-07-465132, pending in San Francisco Superior Court.

4 11. Relief

5 Plaintiffs seek to recover money damages for the death of Gregory Gund,
6 indemnity for sums paid in settlement of the passengers' wrongful death claims,
7 and the value of the Pilatus aircraft, which was destroyed in the accident, all in
8 amounts to be proven at trial.

9 P&WC does not presently seek relief, subject to a potential counterclaim in
10 the future.

11 12. Settlement and ADR

12 The parties have discussed ADR at some length, and have filed the required
13 ADR Certifications with the Court. The parties are presently exploring the
14 possibility of an early, global (to include the passengers' heirs) mediation before a
15 private mediator. The parties have discussed and selected several potential
16 mediators with whom counsel are familiar and have confidence based on prior
17 experience.

18 The parties propose to undertake preliminary discovery to permit them to
19 evaluate the strengths and weaknesses of their respective liability cases, as well as
20 the measure of damages. Because numerous witnesses and the wreckage are
21 located in Costa Rica, the parties expect to encounter procedural hurdles and some
22 delay associated with discovery there, and are working together to pursue the most
23 expedient method of accomplishing same.

24 The parties have also discussed, and will continue to discuss, a process
25 pursuant to which they can exchange confidential expert work product, protected
26 by the mediation privilege, to be used only in the mediation setting and nowhere
27 else.

The parties anticipate that they may be in a position to complete an early mediation of the case by **July 31, 2008**, assuming that some discovery in Costa Rica can be completed and that the calendar of their selected mediator(s) permit. Should the parties fail to resolve the case through mediation, they contemplate completing discovery on liability and damages, and undertaking the exchange of conventional expert reports pursuant to the F.R.C.P.

13. Consent to Magistrate Judge for All Purposes

Assignment to a Magistrate Judge for all purposes has been declined.

14. Other References

The parties do not believe that this case is suitable for binding arbitration or the services of a Special Master, nor is it appropriate for referral to the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

P&WC believes that issues regarding Plaintiffs' remedies will be narrowed through a determination regarding the application of the Death on the High Seas Act. Following the exchange of Rule 26 expert reports, P&WC anticipates that there will be issues regarding the admissibility of certain of Plaintiffs' expert opinions. Plaintiffs also anticipate that there will be issues regarding the admissibility of defense expert opinions.

16. Expedited Schedule

Due to the anticipated difficulties associated with discovery in Costa Rica, and the complexity of the liability issues, the parties do not believe that this case is appropriate for expedited scheduling.

17. Scheduling

The parties propose the following dates:

Completion of Non-Expert Discovery: **February 13, 2009**

Plaintiffs' Designation of Experts: **April 17, 2009**

Defendants' Designation of Experts: **May 15, 2009**

1 Designation of Rebuttal Experts: **June 1, 2009**
 2 Discovery Cut-off: **July 3, 2009**
 3 Deadline to Hear Dispositive Motions: **August 7, 2009**
 4 Pretrial Conference: **October 2009**
 5 Trial: **November 2009**

6 18. Trial

7 The parties request a trial by jury. Plaintiffs believe the case can be tried in
 8 10 days. P&WC believes the case will require 15 days.

9 19. Disclosure of Non-Party Interested Entities or Persons

10 The parties have filed their Certification of Interested Entities or Persons
 11 pursuant to Civil Local Rule 3-16.

12 Plaintiffs disclose North American Specialty Insurance Company as a
 13 potentially interested party, identified in an abundance of caution.

14 P&WC disclosed the following: United Technologies Corporation, Certain
 15 Underwriters at Lloyds London and London Market based aviation insurers.

16 20. Other

17 None.

18 DATED: February 6, 2008

MENDES & MOUNT, LLP

20 By: _____ /s/
 21 GARTH W. AUBERT
 22 Attorneys for Defendant
PRATT & WHITNEY
CANADA CORP.

24 DATED: February 6, 2008

ENGSTROM, LIPSCOMB & LACK

26 By: _____ /s/
 27 ELIZABETH L. CROOKE
 28 Attorneys for Plaintiffs

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